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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

LUIS ENRIQUE MARQUEZ,

Plaintiffs,

v.

JOSEPH BIGGS; TARA LAROSA; and JOHN  
DOES 1-100.

Defendants.

Case No. 3:19-cv-01301

PLAINTIFF'S MEMORANDUM IN  
SUPPORT OF THEIR EMERGENCY  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER

COMES NOW, Plaintiff Luis Marquez, by and through counsel, Juan C. Chavez, provides this Memorandum in Support of his Emergency Motion for a Temporary Restraining Order and Preliminary Injunction enjoining Defendants Joseph Biggs, Tara LaRosa, and John Does 1-100, and all persons acting on their behalf, from convening, rallying, and engaging in the harmful behavior as described in his Complaint on August 17, 2019 in Portland, OR. Plaintiff similarly requests that the Court enjoins Defendants from returning or soliciting other individuals or groups to return to Portland, Oregon, as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march; instructing or facilitating the instruction of

PLAINTIFF'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION



individuals or groups in the use of any weapon or technique capable of causing injury or death, knowing or intending that the weapon or technique will be used at any demonstration, rally, protest, or march, in Portland, Oregon; or issuing any commands, instructions, or directives to any group of two or more persons armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, which commands, instructions, or directives are related to the use of such weapons or any techniques capable of causing injury or death, at any demonstration, rally, protest, or march, in Portland, Oregon.

### **PREFATORY STATEMENT REGARDING EXPEDIENCY OF THIS MEMORANDUM'S DRAFTING**

Plaintiff acknowledges that additional caselaw would aid the Court in its determination as to whether or not it should grant the intended relief. At the time of filing, Defendant Biggs and the Proud Boys are marching on the Tom McCall waterfront in Portland, OR.<sup>1</sup> Plaintiff's Counsel will be made available to the Court if it requires additional oral argument, or briefing. At the time of filing, it is Plaintiff's sincere intent to provide this briefing in good faith. Accordingly, he reserves the right to amend this memorandum as needed.

### **FACTUAL ALLEGATIONS**

On July 25, 2019, Mr. Marquez was contacted by Portland Police Bureau Officer Combs that there were "credible" threats against his life made on the Facebook page hosted by Defendant Biggs. *Dec. Marquez* ¶ 2. Mr. Biggs has also posted images of Mr. Marquez, and has allowed images encouraging violence against Mr. Marquez on his Facebook event page for his August 17, 2019 event. *Id.* at ¶ 4; *Comp.* ¶¶ 29-36. One image in particular caused alarm:

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<sup>1</sup> Aaron Mesh (@AaronMesh), Twitter (Aug. 17, 2019 11:09 am), <https://twitter.com/AaronMesh/status/1162788312731402240?s=20>





Comp. ¶ 1.

An image like this has been preceded by months of slander, libel, and true threats against Mr. Marquez’s life. It is a widely-held belief propagated by right-wing figures like Defendants Biggs and LaRosa<sup>2</sup> that Mr. Marquez is the “leader” of “Antifa” in the Portland-region. *Id.* at ¶ 9. While Mr. Marquez is an activist who participates in protest activities, he in no way has any authority, or ability to make decisions for “Antifa.” *Id.* Antifascism is a political opinion, and, to the best of Mr. Marquez’s knowledge, not an organized group. *Id.* Regardless, Mr. Marquez cannot lead a group that neither exists nor holds any leadership positions. *Id.*

Intense local and national scrutiny has been leveled on “Antifa” in recent months. Following the assault of a local right-wing media personality who promotes events for Proud Boys and other far-right groups, Andy Ngo, calls for investigations from the likes of Senator Ted

<sup>2</sup> Tara LaRosa (@TaraLaRosa), Twitter (Jun. 30, 2019, 8:29 am), <https://twitter.com/TaraLaRosa/status/1145353626837143552>



Cruz<sup>3</sup> and United States President Donald Trump<sup>4</sup> have increased the pressure on persons presumed to be in “Antifa.” In the past, President Trump has warned that “the opposition” to “antifa” are “much tougher” and “violent,” and that “antifa” “better hope that the other side doesn't mobilize.”<sup>5</sup> At the time of filing this memorandum, President Trump has stated that “Major consideration is being given to naming ANTIFA an ‘ORGANIZATION OF TERROR.’ Portland is being watched very closely. Hopefully the Mayor will be able to properly do his job!”<sup>6</sup> The President tweeted this irrespective of the violent organization descending on Portland at this moment. The assault has also precipitated calls from Defendant Biggs for violence against antifascists.<sup>7</sup>

The Proud Boys are a bigoted organization intent on asserting its agenda with violence in the streets. This violence is used to promote their brand of “western chauvinism,” which is a rebranding of White Nationalist and xenophobic rhetoric. Its founder, Gavin McInnes, has made numerous bigoted, sexist statements in describing the aims and goals of the Proud Boys.<sup>8</sup> Media

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<sup>3</sup> Ted Cruz (@SenTedCruz), Twitter (July 18, 2019, 1:02 pm), <https://twitter.com/sentedcruz/status/1151945311876726784?lang=en> (“Antifa is a terrorist organization composed of hateful, intolerant radicals who pursue their extreme agenda through aggressive violence. Time and time again their actions have demonstrated that their central purpose is to inflict harm on those who oppose their views.”)

<sup>4</sup> Donald J. Trump (@realDonaldTrump), Twitter (July 27, 2019), <https://twitter.com/realDonaldTrump/status/1155205025121132545?s=20> (“Consideration is being given to declaring ANTIFA, the gutless Radical Left Wack Jobs who go around hitting (only non-fighters) people over the heads with baseball bats, a major Organization of Terror (along with MS-13 & others). Would make it easier for police to do their job!”)

<sup>5</sup> <https://www.newsweek.com/donald-trump-says-antifa-going-be-big-trouble-opposition-getting-angrier-1215883> (Trump: “These people, like the Antifa—they better hope that the opposition to Antifa decides not to mobilize. Because if they do, they're much tougher. Much stronger. Potentially much more violent... And Antifa's going to be in big trouble... Because if you look, the other side, it's the military. It's the police. It's a lot of very strong, a lot of very tough people. Tougher than them. And smarter for them. They're sitting back and watching and they're getting angrier and angrier.”)

<sup>6</sup> Donald J. Trump (@realDonaldTrump), Twitter (Aug. 17, 2019), <https://twitter.com/realDonaldTrump/status/1162726857231544320?s=20>

<sup>7</sup> Joe Biggs (@Rambobiggs), Twitter (Jun. 29, 2019), since deleted but archived at <https://archive.is/h4NYY>

<sup>8</sup> Southern Poverty Law Center, Proud Boys, <https://www.splcenter.org/fighting-hate/extremist-files/group/proud-boys>



outlets have reported extensively on the Proud Boys' affiliations with neo-Nazi groups such as DIY Division, "a loose collective of violent neo-Nazis and fascists from Southern California that's organized and trains primarily to engage in fighting and violence at political rallies."<sup>9</sup>

Its members, like Jason Kessler, have organized hate rallies, most notably in Charlottesville, VA on August 11-12, 2017.<sup>10</sup> The "United the Right" Rally began with a tiki-torch march where White Nationalist chants were espoused. *Comp.* ¶ 21. Hate groups rallied with the Proud Boys the next day, and were met with counter-protesters. *Id.* On August 12, 2017, a neo-Nazi drove his vehicle into the crowd of counter-protesters, murdering Heather Heyer. *Id.*

The Proud Boys have participated in, and provided security for various right-wing events in Portland in the past. Joseph Gibson, far-right provocateur and hate-group community organizer, has used them as security for his events. *Comp.* ¶ 23. They have come armed, and ready to fight.<sup>11</sup> Their presence has resulted in community members getting beat in the streets with their flagpoles and fists.<sup>12</sup> They have threatened the Mayor of Portland, Ted Wheeler, telling him that "his days are fucking numbered."<sup>13</sup>

Pertinent to Mr. Marquez, Proud Boys have taken particular interest in Mr. Marquez. In their private communication thread on the app Telegram, they have posted not only Mr. Marquez's home address, but the names and addresses of his family members.

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<sup>9</sup> Paul Bass, *Nationalists? Or Whitehoodwinkers?*, New Haven Independent, July 13, 2017.

<sup>10</sup> Tom Porter, *Who are the Alt-right Leaders Addressing the White Nationalist Rally in Charlottesville?*, Newsweek, Aug. 12, 2017; Alan Feuer, *Proud Boys Founder: How He Went From Brooklyn Hipster to Far-Right Provocateur*, N.Y. Times, Oct. 16, 2018; *Explained: Who are the far-right Proud Boys?*, Al-Jazeera, July 18, 2018; Luke Barnes, *Proud Boys Founder Disavows Violence at Charlottesville But One of Its Members Organized the Event*, Think Progress, Aug. 24, 2017.

<sup>11</sup> *Right-wing rally, counter-protesters face off in Portland*, PBS Newshour, Aug. 4, 2017 (quoting a Facebook post from event organizer Joey Gibson stating "We've always had guns at the rally . . . I cannot think of one rally when we didn't have guns with us . . . Everywhere we go, we have guns").

<sup>12</sup> Katie Shepherd, *Portland Police Declare a Riot After Right-Wing Marchers Begin Beating Antifascists with Flag Poles*, Willamette Week, June 30, 2018.

<sup>13</sup> Jason Wilson, *Portland: far-right activist threatens mayor as groups change tactics*, The Guardian, Jan. 29, 2019.



Mr. Biggs has described of his event on an Infowars program broadcasted on July 17, 2019 that he wants to strike fear in Portland, OR.<sup>14</sup> He states that he has “large groups” attending his rally. Members of this large group includes the “Oath Keepers, Three Percenters, American Guard, Proud Boys, who I am with... We’ve got Patriot Prayer.” He goes on to describe, in response to whether counter-protesters know what they are up against, he responds that they have “large guys,” “former Navy Seals,” and “police-types with clubs.” Defendant Biggs has also allied with known neo-Nazi organization Anticom.<sup>15</sup>

Defendant Biggs’s aims to overwhelm Portland and PPB with far-right activists deployed in military formations. He later explains his reasoning for not getting a permit for his event: “I would feel bad for a thousand people to show up to a permitted event and based on the law there, if antifa shows up to this permitted event, the police can tell everyone to disperse and arrest anyone who doesn’t leave, then the event doesn’t happen...”<sup>16</sup> Essentially, it was Defendant Biggs’s belief that getting a permit will ruin the violent event he had planned, since the Police would intervene as soon as the permit’s strictures were violated.

Defendant Biggs’s primary goal is to terrorize the community with violence. Or, as he puts it, “I want them to wake up in the middle of the night to have nightmares that Rufio Panman [aka Ethan Nordean] is going to come into their homes and start knocking them out and putting them to sleep.”<sup>17</sup>

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<sup>14</sup> Baked Blunts, *Massive Patriot Rally Against ANTIFA Coming To Portland Oregon*, YouTube (July 17, 2019), <https://youtu.be/E7LgU6KqLpM>

<sup>15</sup> Unicorn Riot, *Anticom Discord Server Shows Months of Neo-Nazi Incitement*, Unicorn Riot Media (Oct. 18, 2017), <https://unicornriot.ninja/2017/anticom-discord-server-shows-months-neo-nazi-incitement/>

<sup>16</sup> Baked Blunts, *Massive Patriot Rally Against ANTIFA Coming To Portland Oregon*, at 5:18, YouTube (July 17, 2019), <https://youtu.be/E7LgU6KqLpM>.

<sup>17</sup> *Id.* at 2:43.



In a June 30, 2019 tweet, Defendant Biggs implored his followers and future attendees of his event to “Get a gun. But [sic] ammo. Get your gun license. Get training. Practice as much as you can and be ready because the left isn’t playing anymore and neither should we[.]”

The call to join the rally to fight “antifa” has been heard nationwide. On August 9, 2019, a person who displayed a knife and threatened people with firearms outside a migrant community center in El Paso, Texas, mere days after a violent racist stormed an El Paso Wal-Mart, stated that he was on his way to Portland, OR to attend the rally.<sup>18</sup>

These postings and threats have been encouraged by Defendants Biggs and LaRosa. They call for under no uncertain terms harm against Mr. Marquez, putting him in fear for his own life. *Dec. Marquez* ¶¶ 2, 4; *Comp.* ¶¶ 37-38. The influx of dangerous, far-right groups and individuals into the region with an expressed desire to confront “antifa” and its perceived leader has forced Mr. Marquez into hiding. *Id.* Mr. Marquez had moved out of his home of five years, and has had to keep his location secret. *Id.* Mr. Marquez does not feel safe travelling alone. *Id.* He has suffered both emotionally and financially. *Id.*

## ARGUMENT

### A. The Legal Standard for a Temporary Restraining Order

The court may grant a temporary restraining order or preliminary injunction by finding one of two sets of criteria are satisfied. *NRDC v. Winter*, 518 F.3d 658, 677 (9th Cir. 2008). The “traditional” criteria consider four factors: (1) the likelihood of success on the merits, (2) the likelihood of irreparable harm in the absence of preliminary relief, (3) the balance of equities, and in some cases, (4) the public interest. *NRDC v. Winter*, 518 F.3d 658, 677 (9th Cir. 2008);

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<sup>18</sup> Alex Zielinski, *Armed Man Arrested Outside of El Paso Immigrant Center "On His Way to Portland"*, Portland Mercury (Aug. 9, 2019), <https://www.portlandmercury.com/blogtown/2019/08/09/26944904/armed-man-arrested-outside-of-el-paso-immigrant-center-on-his-way-to-portland>



*Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008); and *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131, 1135-38 (9<sup>th</sup> Cir. 2011).

In the Ninth Circuit, among others, courts use a “sliding scale” to evaluate these equitable factors. A strong showing on one of the factors may offset a weak showing on another. *Cottrell*, 632 F.3d at 1131-32. Thus, for example, “a preliminary injunction is appropriate when plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor.”<sup>19</sup> *Id.* at 1134-35 (internal quotations and citations omitted).

Alternatively, a court may grant the request for a Temporary Restraining Order relief if the plaintiff demonstrates either (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) that serious questions are raised, and the balance of hardships tips sharply in the plaintiff’s favor. *NRDC v. Winter*, 518 F.3d 658, 677 (9<sup>th</sup> Cir. 2008).

**B. Mr. Marquez Will Likely Succeed on the Merits in This Case, and Enjoining a Violent Rally is in the Public’s Interest**

Both sets of criteria are satisfied in this case. Defendants have convened a group at currently estimated 300 Proud Boys strong.<sup>20</sup> Based on past behavior, and the threats made and follow through with by Proud Boys, Mr. Marquez would suffer irreparable harm if this rally continues and he or his perceived allies are harmed. The purpose, as articulated by Defendant Biggs, is to cause this level of fear, shock, and, crucially, physical harm to communities he disagrees with. This is not protected speech. This is a criminal enterprise acting with perceived

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<sup>19</sup> The Supreme Court held in *Winter* that a preliminary injunction should not issue if a plaintiff shows only a possibility of harm rather than a likelihood of harm. *Winter v. NRDC, Inc.*, 555 U.S. at 21; *see also* 632 F.3d at 1135. However, it did not reject the sliding scale or “serious question” frameworks discussed above. 632 F.3d at 1132-34.

<sup>20</sup> Aaron Mesh (@AaronMesh), Twitter (Aug. 17, 2019 11:09 am), <https://twitter.com/AaronMesh/status/1162788312731402240?s=20>



impunity. There could be no possible justification for convening a violent mob that counter-weighs Mr. Marquez's or other's safety. Mr. Marquez will have no adequate remedy at law if this harm is allowed to continue in the manner many believe it will come: mass bloodshed in the streets.

### **CONCLUSION**

The Plaintiff humbly prays that the Defendants and all persons acting on their behalf be enjoined in the manner described in his Motion, pending entry by the Court of a final judgment in this action.

DATED: August 17, 2019

Respectfully submitted,

/s/ Juan C. Chavez

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